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November 7, 1996

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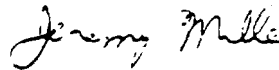
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Re: Illinois Commerce Commission On Its Own Motion
Investigation Concerning Illinois Bell Telephone
Company's Compliance with Section 271(c) of the
Telecommunications Act of 1996 Docket No. 96-0404

Dear Ms. Caton:

Enclosed for filing in the above-cited docket are an original and four copies of the Direct Testimony of Joseph Gillan on behalf of the Competitive Telecommunications Association ("CompTel"). Please return a date-stamped copy of the enclosed (additional copy provided).

Sincerely,



Jeremy B. Miller (Bar No. 6216557)
Linda L. Oliver
Counsel for CompTel

Enclosures

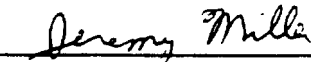
cc: Service List

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CERTIFICATE OF SERVICE

Jeremy B. Miller, an attorney for the Competitive Telecommunications Association, hereby certifies that on the 7th day of November, 1996, he caused to be served the foregoing Direct Testimony of Joseph Gillan in Docket No. 96-0404 by Federal Express (where indicated) or by U. S. Mail, first class postage prepaid, on the attached service list.



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**Direct Testimony of Joseph Gillan
on behalf of the
Competitive Telecommunications Association**

1 **Q. Please state your name and business address.**

2

3 A. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando,
4 Florida 32854.

5

6 **Q. What is your occupation?**

7

8 A. I am an economist with a consulting practice specializing in telecommunications.
9 My clients span a range of interests and have included state public utility
10 commissions, consumer advocate organizations, local exchange carriers.
11 competitive access providers, and long distance companies.

12

13 **Q. Please briefly outline your educational background and related experience.**

14

15 A. I am a graduate of the University of Wyoming where I received B.A. [1978] and
16 M.A. [1979] degrees in economics. My graduate program concentrated on the

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1 economics of public utilities and regulated industries with course work emphasizing
2 price theory and statistics.

3

4 In 1980, I joined the staff of the Illinois Commerce Commission where I had
5 responsibility over the policy content of Illinois Commission filings before the U.S.
6 District Court and the Federal Communications Commission. In addition, I was
7 responsible for staff testimony relating to the emergence of competition in regulated
8 markets, in particular the telecommunications industry. While at the Commission, I
9 served on the staff subcommittee for the NARUC Communications Committee and
10 was appointed to the Research Advisory Council overseeing NARUC's research
11 arm, the National Regulatory Research Institute.

12

13 In 1985, I left the Commission to join U.S. Switch, a venture firm organized to
14 develop interexchange access networks in partnership with independent local
15 telephone companies. At the end of 1986, I resigned my position of Vice President-
16 Marketing to begin a consulting practice. I currently serve on the Advisory Council
17 for New Mexico State University's Center for Regulation.

1 **Q. On whose behalf are you testifying in this proceeding?**

2

3 A. I am testifying on behalf of the Competitive Telecommunications Association
4 (CompTel). CompTel is a national industry association representing competitive
5 carrier interests, principally before the Federal Communications Commission,
6 Congress and other federal agencies. CompTel has recently formed a state advocacy
7 program to address issues important to its membership in selected key states.
8 CompTel's membership includes over 185 competitive providers of
9 telecommunication services, many of whom provide service in Illinois.

10

11 **Q. What is the purpose of your testimony?**

12

13 A. The purpose of my testimony is to address Ameritech's remarkable (and, as shown
14 below, premature) claim that it has already taken the actions necessary to obtain
15 interLATA authority under the terms of Section 271 of the Telecommunications Act
16 of 1996 (the Act).

17

18 The Illinois Commission has been a leader in the nation in its efforts to *try* to open
19 local markets to competition. The Commission has sequentially addressed loop

1 unbundling, interconnection, the resale of local exchange services, and is presently
2 engaged in the process of crafting a viable network-platform configuration that (at
3 least in theory) could be used to offer services with an ease and at a network cost
4 comparable to Ameritech itself. *When* these tasks are complete -- as demonstrated
5 by active, operational and broad-based local competition -- the Commission may
6 conclude that its efforts have been successful and thus verify that Ameritech Illinois
7 is in compliance with the requirements of Section 271 of the Act.

8
9 As I describe below, however, even Ameritech's own testimony recognizes that the
10 experience to date with local competition remains experimental and that the actual
11 conditions to create local competition are not yet known with certainty.¹ The Act
12 effectively extends the local competition "experiment" to a national scale, but it
13 does not guarantee its success. Before Ameritech can be permitted to provide in-
14 region interLATA service, it must empirically show that all of the tools in the
15 "checklist" are implemented -- fully supported by systems that translate the Act's
16 language to practical tools -- and are resulting in actual entry and competition on a
17 broad scale.

¹ The Illinois staff has long recognized that the conditions and actions that will be necessary to establish local competition are unknown. See Testimony of Charlotte TerKeurst, Customers First, Docket 94-0096.

1 **Q. What are the principal conclusions of your testimony?**

2

3 **A. In the testimony which follows, I demonstrate the following points:**

4

5 * Ameritech's stated expectation that full service packages (e.g., one stop
6 shopping) will dominate the telecommunications industry has serious
7 implications for competition generally. The market's evolution to full
8 service competition means that competitive local services must become as
9 prevalent and as easy to offer as long distance services are today or
10 Ameritech will dominate both markets as the only provider capable of
11 offering one-stop packages.

12

13 * Section 271 (in lay terms) requires two findings. First, that Ameritech has
14 implemented each of the tools needed (or, at least, *expected*) to establish a
15 competitive local market (i.e., the Competitive Checklist); and, second, that
16 meaningful local competition is the result (the Competitive Presence Test).
17 Theoretical compliance that does not result in tangible, measurable,
18 competition is not sufficient.

19

20 * The Commission should use the accelerated schedule of this proceeding to
21 compile a record sufficient to discharge its role as consultant to the FCC and
22 Department of Justice by finding that Ameritech has not yet satisfied the
23 requirements of Section 271. The Commission should not attempt,
24 however, within the confines of this procedural schedule, to construct an
25 exhaustive inventory of the additional steps that will be necessary for
26 Ameritech to comply in the future.

1 **Q. What are you recommending?**

2

3 A. The Commission should advise the Department of Justice and the FCC that
4 Ameritech Illinois is not in compliance with the requirements of Section 271 of the
5 Act. This finding is easily supported by a number of obvious deficiencies, many
6 relating to the incompleteness of Ameritech's unbundled switch proposal.

7

8 The Commission should then continue this proceeding, to monitor Ameritech's
9 progress implementing the Checklist, the FCC's Local Competition Rules, and the
10 Illinois Commission's Platform Order. If, after the completion of these tasks,
11 entrants can offer exchange services with the same ease that Ameritech will be able
12 to offer interLATA services -- proven by actual competition -- then it will be time to
13 verify Ameritech's compliance with Section 271.

14

15 **Q. Is your procedural recommendations consistent with Ameritech's testimony?**

16

17 A. No. There appears to be a fundamental dispute concerning the purpose of this
18 proceeding. As framed by the Commission, this proceeding is intended to *factually*
19 address whether Ameritech complies with the requirements of Section 271:

1 The Commission finds it appropriate . . . to hold evidentiary hearings
2 in order to properly discharge its role as consultant to the FCC and as
3 an information gatherer for the Department of Justice . . .²
4

5 Evaluating Ameritech's compliance with Section 271 requires that the Commission
6 investigate *both* the Competitive Checklist and the level of local competition. In
7 Ameritech's view, however, this proceeding is intended only to factually establish
8 the level of local competition and not to determine specific compliance with the
9 Competitive Checklist:
10

11 This proceeding should be used primarily to develop the factual
12 record regarding competition in Ameritech Illinois' service territory
13 and a *general view* of the Company's compliance with Checklist
14 requirements. The General Statement docket should be used to
15 debate specific components of the Company's offerings and prices.³
16

17 Factually establishing Ameritech's compliance with the Competitive Checklist will
18 require a number of specific, detailed findings that are not possible in the context of
19 a "general review." For instance, the Checklist requires that the prices charged for

² Order Initiating Investigation, Illinois Commerce Commission, Docket 96-0404,
 August 26, 1996.

³ Direct Testimony of David Gebhardt, Ameritech Illinois' Exhibit 1.0, page 20,
 emphasis added.

1 each of the tools required by the Checklist comply with the Act's pricing
2 requirements.

3
4 **Q. In your view then when is the *earliest* that Ameritech could plausibly claim**
5 **that it satisfies the Competitive Checklist?**

6
7 A. In my opinion, Ameritech could not comply with the checklist component of
8 Section 271 -- much less make a showing that the tools are actually working to
9 provide competition -- before the Commission concludes its review of Ameritech's
10 tariff and its General Statement, and finds that its prices are supported by the
11 underlying costs.

12
13 **Q. Would this procedural approach delay Ameritech's application for interLATA**
14 **authority?**

15
16 A. No. Ameritech's own "documentation" of the level of local competition shows
17 that entry is barely perceptible, much less sufficient to justify the granting of a 271
18 application. Thus, awaiting the conclusion of the Commission's cost/tariff
19 investigations would not delay Ameritech's demonstrated compliance with the

1 Checklist beyond any reasonable expectation of when local competition would, in
2 fact, develop to a level sufficient to comply with the Act. This should not be
3 surprising. Local competition should not be expected until the Commission
4 completes these investigations and produces an effective network element tariff
5 that contains (among other items) a viable unbundled local switch element.
6

7 **Ameritech's Market View Presents a Compelling**
8 **Need for Demonstrating Measurable Local Competition**
9

10 **Q. What explanation has Ameritech offered for its desire to obtain expeditious**
11 **entry to the interLATA market?**
12

13 **A.** The principal explanation offered by Ameritech is the view that a significant portion
14 of the market prefers one-stop shopping:
15

16 One-stop shopping is the next stage of this [market] evolution.
17 Customers generally want one carrier to serve all of their needs,
18 ranging from the provision of local dial tone to international
19 services.⁴

⁴ Direct testimony of David Gebhardt, Illinois Bell Exhibit 1.0, page 9.

1 **Q. Do you share Mr. Gebhardt's view of the future structure of the Illinois**
2 **telecommunications market?**

3

4 A. Yes. I agree with Mr. Gebhardt that a significant portion of the Illinois market is
5 likely to desire one-stop shopping. In fact, it is precisely *because* of this conclusion
6 that I believe it is so important that the Commission make sure that carriers are able
7 to compete with Ameritech by offering packages combining both local and long
8 distance.

9

10 **Q. Why is the trend towards full service competition so significant?**

11

12 A. Although Mr. Gebhardt agrees with the basic direction of the market, he totally
13 ignores the implication of this conclusion for competition. If consumers (or, at least,
14 *most* consumers) prefer one-stop shopping, then there must be competition for each
15 element in the "one-stop package" or competition in all telecommunications markets
16 will suffer.

17

18 It is well established that Ameritech will be able to easily offer long distance service
19 -- after all, thousands of firms since divestiture have entered this market without any

1 of the advantages of being an incumbent local exchange carrier. There is no parallel
2 evidence, however, that local services can be offered by other carriers in any
3 comparable way. The fundamental objective of the Act, the FCC's rules and this
4 Commission's Orders is to create, through regulatory order, the tools that entrants
5 need to provide services in competition with Ameritech. Nevertheless, there is no
6 guarantee that such policies will be successful.

7

8 **Q. What does this conclusion mean with respect to Section 271?**

9

10 A. The fact that competition in all markets would be jeopardized by prematurely
11 permitting Ameritech to offer both local and long distance services underscores the
12 importance of Ameritech satisfying both prongs of Section 271. First, Ameritech
13 must implement all that Congress has identified as the prerequisites to competition.
14 This list forms the backbone of the Competitive Checklist. Second, the Checklist
15 must be shown to be working. This requires demonstrated entry, with competitive
16 services offered broadly in the market, reliant in part on non-discriminatory access
17 to Ameritech Illinois' network at cost-based rates.

1 **Q. Does Ameritech agree with the importance of satisfying both requirements of**
2 **Section 271?**

3
4 A. No. Ameritech seems to believe that Congress established Section 271 as a vehicle
5 for it to enter the interLATA market without any showing that local competition is
6 both possible and occurring.
7 Ameritech acknowledges that the listed requirements of Section 271 are only
8 Congress' "best guess" as to the conditions necessary for local competition to
9 succeed:

10

11 The "competitive checklist" was Congress' ex ante prediction about
12 what items relating to access and interconnection might be necessary
13 to facilitate competition in the local exchange market.⁵
14

15 Despite Ameritech's admission that Congress did not know what would be required
16 for local competition to take hold, Ameritech also concludes that Congress did not
17 include within Section 271 a requirement that meaningful competition actually
18 result:

⁵ Ameritech Illinois' Legal Memorandum in Response to Order Initiating
Investigation, No. 96-0404, September 27, 1996, page 21.

1 There is no requirement that the market be "effectively competitive".
2 Congress rejected such a "metrics" test, in favor of an
3 interconnection agreement and the satisfaction of the "competitive
4 checklist" requirement.⁶
5

6 **Q. Are these positions consistent?**

7
8 A. No, of course not. Ameritech evidently believes that Congress gave it both its cake
9 and everyone else's as well. There is a substantial difference between Congress
10 adopting a *specific* "metric" in the Act and requiring an *empirical* demonstration that
11 competition is succeeding in order for Section 271 to be satisfied. Under
12 Ameritech's interpretation of the Act, Congress both understood that the checklist
13 *may not* be sufficient for local competition *and* it permitted Ameritech to enter the
14 interLATA market without showing what would be required for competition to
15 succeed.

16
17 Such a position is unreasonable. I believe that Ameritech is correct that Congress
18 adopted the Checklist because it was (and still is) the best ex ante prediction of the
19 tools that would be needed to make local competition possible. I disagree, however,

⁶ Ameritech Illinois' Legal Memorandum in Response to Order Initiating
Investigation, No. 96-0404, September 27, 1996, page 4.

1 that Congress also adopted an approach which excused Ameritech from
2 demonstrating that these tools actually work by requiring a showing of meaningful
3 competition.

4
5 **Q. What does this conclusion mean with respect to any rational interpretation of**
6 **Section 271?**

7
8 **A. It means that Congress must have been concerned with both prongs of Section 271:**
9 its ex ante list of prerequisites (the Checklist) and the requirement that competition
10 was occurring (the Competitive Presence Test). Both must be clearly satisfied
11 before interLATA authority is appropriate.

12

13 **Ameritech Does Not Satisfy Either Prong of 271**

14

15 **Q. Should the Commission strive to conduct an exhaustive evaluation of the**
16 **Competitive Checklist and Competitive Presence test in this proceeding?**

17

18 **A. No. Any reasonable evaluation of the status of competition in Illinois shows that**
19 Ameritech Illinois' interLATA application is premature. The principal means for

1 widespread local competition to enter the market -- Illinois' precedential platform
2 arrangement -- is not yet an effective tariff and, based even on a cursory review of
3 Ameritech's proposal, is at least one Commission decision (and an unknown number
4 of Ameritech compliance efforts) away from becoming a reality. The Commission
5 must perform its role as fact-finder for the FCC and DOJ, but it should do so with a
6 clear recognition that an application for interLATA authority before any sensible
7 experience with local competition has occurred is premature.

8
9 **Q. Are there examples of where Ameritech clearly fails any reasonable**
10 **interpretation of the checklist?**

11
12 **A.** Yes. Even a cursory review of its "unbundled local switching" offering can be
13 shown to be deficient and unlikely to permit any wide-scale competition with
14 Ameritech.

15
16 The Commission shouldn't be surprised by this deficiency given Ameritech's curious
17 history with unbundled local switching and platform proposals. Ameritech first
18 claimed that it was unable to understand the platform concept after nearly 10 months
19 and five rounds of testimony in the Wholesale/Network Elements Proceeding

1 (Docket Nos. 95-0458/0531). Certainly, Ameritech's so-called SRS tariff
2 demonstrated "confusion" concerning its obligation to provide switching capacity as
3 a network element that could be combined with loops and transport.
4 Then, in the ultimate irony, Ameritech withdrew its SRS tariff because it failed to
5 comply with the FCC's Local Competition Rules, even though the FCC Rules
6 adopted, on a national scale, Illinois' precedential Order.⁷ This history with the
7 platform approach does not leave one optimistic that Ameritech will operationalize
8 this concept soon.

9
10 **Q. Please summarize the unbundled switching element that underlies the Illinois**
11 **and federal approaches.**

12
13 **A.** The unbundled switching element underlying federal rules and the Illinois platform
14 is the lease of switching capacity on a per-line basis to an entrant that then replaces
15 Ameritech as the subscriber's local telephone carrier with respect to local exchange
16 (including vertical features) and exchange access services.

17
18 . . . a carrier that purchases the unbundled local switching element to
19 serve an end user effectively obtains *the exclusive right* to provide all

See Mr. Gebhardt's Direct Testimony, Ameritech Illinois Exhibit 1.0, page 22.

1 features, functions, and capabilities of the switch, including
2 switching for exchange access and local exchange service, for that
3 end user.⁸
4

5 The unbundled switching element may then be combined with loops and transport
6 obtained from Ameritech to form a basic exchange "platform" for the offering of
7 local and access services of the purchaser's choosing and, where appropriate, to
8 replace components with network elements that are either self-provided or obtained
9 from third-parties.
10

11 **Q. Is Ameritech's proposed unbundled local switching (ULS) element consistent**
12 **with this framework?**
13

14 **A.** No. Ameritech's proposal appears to suffer from (at least) three critical (and a
15 number of lesser) flaws:
16

17 * Ameritech's proposed switching element does not recognize the purchasing
18 carrier as the provider of exchange access service to its subscribers.
19 Ameritech's proposal does not provide the entrant the billing data relating to
20 the access traffic to/from the entrant's subscribers so that the entrant may
21 render access bills; nor is there any discussion that Ameritech will cease

⁸ Order on Reconsideration, Federal Communications Commission, CC Docket No. 96-98, Released September 27, 1996.

1 billing access on the traffic terminating to the subscribers of the ULS-based
2 entrants.⁹

3
4 * Ameritech's unbundled switching element does not permit the entrant to
5 terminate traffic within the local network using Ameritech's common
6 interoffice network at cost-based network element rates. Rather, Ameritech
7 proposes to impose *retail-based* usage charges in direct contravention of
8 every principle underlying the platform configuration and the Act.

9
10 * Ameritech's proposal does not guarantee that purchasers of unbundled
11 switching will have dialing parity to operator and directory services as
12 required by the Act and FCC rules.
13

14 The bottom line is that Ameritech's unbundled switching element does not appear to
15 satisfy the *definition* of this element as required by federal rules and the Act, much
16 less can Ameritech claim it satisfies the *pricing* standards necessary to show
17 compliance with the requirements of Section 271. Similarly, it fails to meet the
18 requirements established by this Commission in Docket Nos. 95-0458/0531. As
19 noted earlier, however, these are only the switching element's most obvious
20 problems.

⁹ Alternatively, particularly in the short term, it may be more efficient for Ameritech to bill access on behalf of the entrant and remit collected revenues.

1 **Q. Why does it appear that Ameritech's unbundled switching element does not**
2 **establish the entrant as the provider of exchange access service?**

3
4 **A. First, Ameritech indicates only that it will provide billing data relating to end-user**
5 **information, not the billing data necessary for carrier access billing (and**
6 **interconnection).¹⁰ Second, there is no discussion in Ameritech's tariff filing**
7 **concerning the application of access charges to traffic *terminating* to subscribers**
8 **served by ULS-based providers. This silence implies that Ameritech intends to**
9 **collect access charges on the traffic terminating to the entrant's customers.**

10
11 **Q. Will Ameritech permit carriers providing service using unbundled local**
12 **switching to use Ameritech's transport network as a network element on the**
13 **same terms as Ameritech?**

14
15 **A. No. Ameritech indicates that it will only offer two transport options: dedicated**
16 **transport and shared-dedicated transport.¹¹ The transport option that will be desired**
17 **most by entrants using the unbundled local switching element, however, would use**

¹⁰ See Direct Testimony of William Dunny, Ameritech Illinois Exhibit 2, page 41.

¹¹ Ameritech's view of shared transport appears to be a facility dedicated to a group of entrants where collectively the entrants pay for 100% of the dedicated facility.